

8406

I N A S S E M B L Y

January 15, 2014

Introduced by M. of A. MAGEE -- read once and referred to the Committee on Corporations, Authorities and Commissions

AN ACT to amend the public authorities law, in relation to the Montgomery, Otsego, Schoharie county solid waste management authority; and repealing certain provisions of such law relating thereto

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Subdivision 2 of section 2041-a of the public authorities
2 law, as amended by chapter 7 of the laws of 2012, is amended and a new
3 subdivision 2-a is added to read as follows:
4 2. "Authority" shall mean the public benefit corporation created by
5 section two thousand forty-one-b of this title, known as the Montgomery,
6 Otsego, Schoharie solid waste management authority. [If and at such time
7 that Otsego county terminates its membership in the authority pursuant
8 to section two thousand forty-one-w of this title, the "authority" shall
9 be known as the Montgomery-Schoharie solid waste management authority
10 and Otsego county would no longer be considered one of the "participat-
11 ing counties" for the purposes of this title.]
12 2-A. "AUTHORITIES BUDGET OFFICE" SHALL MEAN THE INDEPENDENT ENTITY
13 WITHIN THE DEPARTMENT OF STATE ESTABLISHED PURSUANT TO SECTION FOUR OF
14 THIS CHAPTER.
15 S 2. Subdivision 6 of section 2041-b of the public authorities law is
16 REPEALED.
17 S 3. Section 2041-w of the public authorities law, as amended by chap-
18 ter 7 of the laws of 2012, is amended to read as follows:
19 S 2041-w. [Withdrawal of Otsego county] DISSOLUTION. 1. Notwithstand-
20 ing any provision of law to the contrary, [Otsego county is hereby
21 authorized to terminate its membership in] the Montgomery, Otsego, Scho-
22 harie county solid waste management authority[; provided, however, that
23 Otsego county shall fulfill its obligations and responsibilities, and
24 terminate such membership, as may be required by and consistent with
25 existing or hereafter-entered superseding agreements between the author-
26 ity, and the counties of Montgomery, Otsego, and Schoharie, and become
27 effective upon approval of a resolution by a majority of the duly

EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets [] is old law to be omitted.

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1 constituted membership of the Otsego county board of representatives,
2 filed with the authority and the legislative board clerks of the compo-
3 nent counties.

4 2. The authority and the counties of Montgomery, Otsego and Schoharie
5 shall execute a plan for Otsego county's assumption of its proportional
6 and equitable share of the authority's assets and liabilities. For
7 purposes of this section, "proportional and equitable share of the
8 authority's assets and liabilities" shall be based on the allocation
9 percentages specified in the "Post Closure Monitoring and Maintenance
10 Agreement", dated December nineteenth, two thousand nine, entered into
11 between the Montgomery, Otsego, Schoharie county solid waste management
12 authority and the three counties. Assets shall include, but not be
13 limited to, the authority's reserve and operating funds and rights to
14 the use of any Montgomery, Otsego, Schoharie county solid waste manage-
15 ment authority operated transfer stations in Otsego county subject to
16 the conditions held by the respective owners of the properties] SHALL BE
17 DISSOLVED ON A DATE ESTABLISHED BY RESOLUTION ADOPTED UPON A VOTE OF A
18 MAJORITY OF THE BOARD OF DIRECTORS OF SAID AUTHORITY. IN ANY SUCH RESOL-
19 UTION, THE DATE OF DISSOLUTION SHALL NOT OCCUR PRIOR TO THE TERMINATION
20 OF THE "SERVICE AGREEMENT" DATED AS OF MAY FIRST, NINETEEN EIGHTY-NINE,
21 AS AMENDED BY AMENDMENT NO. 1 DATED AS OF MAY FIRST, TWO THOUSAND TEN,
22 BY AND BETWEEN THE COUNTIES OF MONTGOMERY, OTSEGO AND SCHOHARIE AND THE
23 AUTHORITY, NOR LATER THAN OCTOBER FIRST, TWO THOUSAND FOURTEEN. UPON THE
24 ADOPTION OF SUCH RESOLUTION, THE BOARD OF DIRECTORS SHALL MAKE PROVISION
25 FOR THE WINDING DOWN OF THE BUSINESS AND AFFAIRS OF THE AUTHORITY, AND
26 SHALL DISTRIBUTE THE ASSETS AND LIABILITIES OF THE AUTHORITY TO THE
27 MEMBER COUNTIES AS OF A TRANSFER DATE OR DATES ESTABLISHED BY THE
28 AUTHORITY, WHICH SHALL BE ON OR PRIOR TO THE DATE OF DISSOLUTION, ALL IN
29 ACCORDANCE WITH SUBDIVISIONS TWO AND THREE OF THIS SECTION.

30 2. IN DISTRIBUTION OF THE ASSETS AND LIABILITIES OF THE AUTHORITY TO
31 THE MEMBER COUNTIES, THE FOLLOWING TRANSACTIONS SHALL OCCUR:

32 (A) THE AUTHORITY SHALL CONVEY, AND THE COUNTIES OF MONTGOMERY, OTSEGO
33 AND SCHOHARIE, RESPECTIVELY, SHALL ACCEPT, ALL OF THE AUTHORITY'S RIGHT
34 TITLE AND INTEREST IN THE REAL PROPERTY, STRUCTURES AND IMPROVEMENTS
35 CONSTITUTING THE TRANSFER STATIONS OWNED BY THE AUTHORITY, INCLUDING BUT
36 NOT LIMITED TO ANY AND ALL PERMITS AND LICENSES ATTENDANT THERETO,
37 ACCORDING TO THE FOLLOWING DISTRIBUTION, WITHOUT REGARD TO APPRAISED
38 VALUE AND WITHOUT OTHER CONSIDERATION EXCEPT AS SET FORTH IN THIS
39 SECTION.

40 (I) TO THE COUNTY OF MONTGOMERY, THE TRANSFER STATIONS KNOWN AS THE
41 WESTERN TRANSFER STATION LOCATED AT 4583 ROUTE 5S IN SPRAKERS, N.Y., AND
42 THE AMSTERDAM TRANSFER STATION LOCATED AT 1247 ROUTE 5S IN AMSTERDAM,
43 N.Y.;

44 (II) TO THE COUNTY OF OTSEGO, THE TRANSFER STATIONS KNOWN AS THE
45 NORTHERN TRANSFER STATION LOCATED AT 5802 STATE HIGHWAY 28 IN COOPERS-
46 TOWN, N.Y., AND THE ONEONTA TRANSFER STATION LOCATED AT 75 SILAS LANE IN
47 ONEONTA, N.Y.; AND

48 (III) TO THE COUNTY OF SCHOHARIE THE TRANSFER STATION KNOWN AS THE
49 SCHOHARIE TRANSFER STATION LOCATED AT 2805 ROUTE 7 IN COBLESKILL, N.Y.
50 TOGETHER WITH THE BALANCE OF THE REAL PROPERTY OWNED BY THE AUTHORITY AT
51 SUCH LOCATION, INCLUDING BUT NOT LIMITED TO THE ADMINISTRATIVE OFFICE
52 BUILDING OF THE AUTHORITY LOCATED ADJACENT TO SAID TRANSFER STATION.

53 (B) CONCURRENTLY WITH THE CONVEYANCE OF TITLE TO THE REAL PROPERTY AND
54 IMPROVEMENTS DESCRIBED IN PARAGRAPH (A) OF THIS SUBDIVISION, THE AUTHOR-
55 ITY SHALL CONVEY, AND THE COUNTIES OF MONTGOMERY, OTSEGO AND SCHOHARIE,
56 RESPECTIVELY, SHALL ACCEPT, WITH RESPECT TO EACH SUCH TRANSFER STATION,

1 ALL OF THE AUTHORITY'S RIGHT TITLE AND INTEREST IN THE MOVEABLE FIXTURES
2 AND EQUIPMENT LOCATED AT, AND ATTENDANT TO, THE OPERATION OF SUCH TRANS-
3 FER STATIONS. THE INVENTORY OF MOVEABLE FIXTURES AND EQUIPMENT PREPARED
4 BY THE AUTHORITY AS OF NOVEMBER FOURTH, TWO THOUSAND THIRTEEN AND ON
5 FILE WITH THE CLERK OF EACH COUNTY, UNLESS OTHERWISE AGREED BY THE COUN-
6 TIES, SHALL BE THE BASIS FOR SUCH TRANSFERS, SUBJECT TO ORDINARY USE BY
7 THE AUTHORITY PRIOR TO THE TRANSFER DATE. ON THE WRITTEN REQUEST OF ANY
8 OF THE COUNTIES, MADE NOT LATER THAN FIFTEEN DAYS AFTER THE FIRST OF THE
9 CONVEYANCES DESCRIBED IN PARAGRAPH (A) OF THIS SUBDIVISION, THE AUTHORI-
10 TIES BUDGET OFFICE SHALL DESIGNATE A MEDIATOR AND/OR AN APPRAISER TO
11 EXAMINE THE DISTRIBUTION OF MOVEABLE FIXTURES AND EQUIPMENT AT EACH OF
12 THE TRANSFER STATIONS, WHICH MEDIATOR OR APPRAISER SHALL BE AUTHORIZED
13 TO ORDER A MORE EQUITABLE DISTRIBUTION OF SUCH MOVEABLE FIXTURES AND
14 EQUIPMENT, TO ENSURE THAT EACH SUCH TRANSFER STATION IS FUNCTIONALLY
15 CAPABLE OF CONTINUING OPERATIONS AFTER THE AUTHORITY CEASES PROVISION OF
16 SOLID WASTE SERVICES. ANY SUCH ORDER ISSUED BY SUCH MEDIATOR OR
17 APPRAISER SHALL BE FINAL AND BINDING ON EACH OF THE COUNTIES.

18 (C) THE AUTHORITY SHALL CONVEY, AND THE COUNTIES OF MONTGOMERY, OTSEGO
19 AND SCHOHARIE SHALL ACCEPT, IN COMMON OWNERSHIP, ALL OF THE AUTHORITY'S
20 RIGHT TITLE AND INTEREST IN THE REAL PROPERTY, STRUCTURES AND IMPROVE-
21 MENTS CONSTITUTING THE LANDFILLS MORE FULLY DESCRIBED IN THE "POST
22 CLOSURE MONITORING AND MAINTENANCE AGREEMENT" DATED DECEMBER TENTH, TWO
23 THOUSAND NINE, ENTERED INTO BETWEEN THE MONTGOMERY, OTSEGO, SCHOHARIE
24 COUNTY SOLID WASTE MANAGEMENT AUTHORITY AND THE THREE COUNTIES, TOGETHER
25 WITH ALL MONIES HELD BY THE AUTHORITY IN THE LANDFILL OPERATING ACCOUNT
26 AND THE AUTHORITY'S INTEREST IN THE POST CLOSURE RESERVE ACCOUNT ESTAB-
27 LISHED PURSUANT TO SAID AGREEMENT. FROM AND AFTER THE TRANSFER OF TITLE
28 TO THE LANDFILLS FROM THE AUTHORITY TO THE COUNTIES, THE AUTHORITY SHALL
29 HAVE NO FUTURE OBLIGATION AND RESPONSIBILITY UNDER SAID POST CLOSURE
30 MONITORING AND MAINTENANCE AGREEMENT, WHICH RESPONSIBILITIES SHALL BE
31 ASSUMED BY THE COUNTIES.

32 (D) CONCURRENTLY WITH THE CONVEYANCE OF TITLE TO THE REAL PROPERTY AND
33 IMPROVEMENTS DESCRIBED IN PARAGRAPH (C) OF THIS SUBDIVISION, THE AUTHOR-
34 ITY SHALL CONVEY, AND THE COUNTIES OF MONTGOMERY, OTSEGO AND SCHOHARIE
35 SHALL ACCEPT IN COMMON OWNERSHIP, WITH RESPECT TO EACH SUCH LANDFILL,
36 ALL OF THE AUTHORITY'S RIGHT TITLE AND INTEREST IN THE MOVEABLE FIXTURES
37 AND EQUIPMENT LOCATED AT, AND ATTENDANT TO, THE MONITORING, MAINTENANCE
38 AND OTHER POST-CLOSURE ACTIVITIES REQUIRED AT SUCH LANDFILLS BY LAW. THE
39 INVENTORY OF MOVEABLE FIXTURES AND EQUIPMENT REFERRED TO IN PARAGRAPH
40 (B) OF THIS SUBDIVISION SHALL BE THE BASIS FOR SUCH TRANSFERS, SUBJECT
41 TO ORDINARY USE BY THE AUTHORITY PRIOR TO THE TRANSFER DATE.

42 (E) UPON THE COMPLETION OF THE PROPERTY TRANSFERS SET FORTH IN PARA-
43 GRAPHS (A), (B), (C) AND (D) OF THIS SUBDIVISION, BUT IN ANY EVENT NOT
44 LATER THAN OCTOBER FIRST, TWO THOUSAND FOURTEEN, ALL OTHER ASSETS OF THE
45 AUTHORITY, INCLUDING ALL OPERATING AND RESERVE FUNDS, SHALL BE DISTRIB-
46 UTED TO THE MEMBER COUNTIES IN ACCORDANCE WITH THE ALLOCATION PERCENT-
47 AGES SPECIFIED IN THE "POST CLOSURE MONITORING AND MAINTENANCE AGREE-
48 MENT", DATED DECEMBER TENTH, TWO THOUSAND NINE, ENTERED INTO BETWEEN THE
49 MONTGOMERY, OTSEGO, SCHOHARIE COUNTY SOLID WASTE MANAGEMENT AUTHORITY
50 AND THE THREE COUNTIES, PROVIDED HOWEVER, THAT THE BOARD OF DIRECTORS OF
51 THE AUTHORITY SHALL BE AUTHORIZED TO SET ASIDE SUCH FUNDS AS ARE NECES-
52 SARY AND PROPER TO SETTLE, PAY, AND OTHERWISE RESOLVE ALL OUTSTANDING
53 ACCOUNTS, CLAIMS, AND OTHER LIABILITIES OF THE AUTHORITY PRIOR TO THE
54 DATE OF DISSOLUTION, AND ANY REMAINDER SHALL BE DISTRIBUTED TO THE
55 MEMBER COUNTIES PURSUANT TO THE ALLOCATION ESTABLISHED IN THIS PARA-
56 GRAPH; AND PROVIDED FURTHER, THAT IN THE EVENT THAT ANY FUNDS SET ASIDE

1 BY THE BOARD OF DIRECTORS TO RESOLVE OUTSTANDING ACCOUNTS, CLAIMS, AND
2 OTHER LIABILITIES OF THE AUTHORITY ARE INSUFFICIENT FOR SUCH PURPOSE,
3 THE COUNTIES SHALL BE RESPONSIBLE FOR THE PAYMENT OF ANY LAWFUL OBLI-
4 GATIONS, ACCOUNTS, CLAIMS AND LIABILITIES OF THE AUTHORITY IN ACCORDANCE
5 WITH THE ALLOCATION PERCENTAGES SPECIFIED IN THE AFORESAID "POST CLOSURE
6 MONITORING AND MAINTENANCE AGREEMENT".

7 (F) NOTWITHSTANDING ANY OTHER PROVISION OF LAW TO THE CONTRARY, ALL
8 TRANSFERS PROVIDED FOR IN THIS SECTION SHALL BE WITHOUT REGARD TO
9 APPRAISED VALUE, AND WITHOUT OTHER CONSIDERATION. IT IS HEREBY DETER-
10 MINED THAT THE TRANSFERS OF PROPERTY PURSUANT TO THIS SECTION ARE FOR
11 THE BENEFIT OF THE PEOPLE OF THE PARTICIPATING COUNTIES AND THE STATE
12 AND ARE FOR A PUBLIC PURPOSE. THE DISSOLUTION OF THE AUTHORITY AS
13 PROVIDED IN THIS SECTION AND THE TRANSFERS OF PROPERTY AUTHORIZED AND
14 DIRECTED IN THIS SECTION SHALL BE DEEMED TO BE MINISTERIAL ACTS OF AN
15 OFFICIAL NATURE, INVOLVING NO EXERCISE OF DISCRETION, WITHIN THE MEANING
16 OF PARAGRAPH (II) OF SUBDIVISION FIVE OF SECTION 8-0105 OF THE ENVIRON-
17 MENTAL CONSERVATION LAW.

18 3. UPON DISSOLUTION, THE BOOKS AND RECORDS OF THE AUTHORITY SHALL BE
19 DELIVERED TO THE CUSTODY OF THE COUNTY OF SCHOHARIE, AND SHALL BE MADE
20 AVAILABLE, AT REASONABLE TIMES, TO ANY RECEIVER APPOINTED PURSUANT TO
21 THIS SUBDIVISION AND TO AUTHORIZED REPRESENTATIVES OF THE COUNTIES OF
22 MONTGOMERY, OTSEGO AND SCHOHARIE ON REQUEST, AND TO OTHER PERSONS IN
23 ACCORDANCE WITH LAW. THE FINANCES AND ACCOUNTS OF THE AUTHORITY AS OF
24 THE DATE OF DISSOLUTION SHALL BE THE SUBJECT OF A FINAL AUDIT, WHICH
25 SHALL BE SUBJECT TO THE REVIEW AND APPROVAL OF THE AUTHORITIES BUDGET
26 OFFICE, AND ANY ACCOUNTS PAYABLE AND RECEIVABLE, AND ANY CLAIMS, OBLI-
27 GATIONS OR OTHER LIABILITIES REMAINING UNSETTLED OR UNRESOLVED AT THE
28 DATE OF DISSOLUTION SHALL BE ASSIGNED TO A RECEIVER TO BE APPOINTED BY
29 THE AUTHORITIES BUDGET OFFICE. UNLESS OTHERWISE AGREED BY THE COUNTIES
30 AND THE AUTHORITIES BUDGET OFFICE, SUCH RECEIVER SHALL BE SELECTED FROM
31 A LIST OF QUALIFIED PERSONS MAINTAINED BY THE OFFICE OF COURT ADMINIS-
32 TRATION AND THE COMPENSATION AND CONDUCT OF SUCH RECEIVER SHALL BE
33 GOVERNED BY THE RULES OF THE CHIEF JUDGE. SAID RECEIVER SHALL BE AUTHOR-
34 IZED TO PAY, COLLECT, SETTLE OR RESOLVE ALL SUCH ACCOUNTS, CLAIMS, OBLI-
35 GATIONS AND LIABILITIES IN ACCORDANCE WITH LAW, AND TO DEFEND AND MAIN-
36 TAIN ACTIONS AT LAW WITH RESPECT THERETO IN THE NAME OF THE AUTHORITY.

37 S 4. This act shall take effect immediately.